IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1380 OF 2004

THE STATE OF MAHARASHTRA ..APPELLANT

V/S

ANIL G. MALHARI & ANR. ..RESPONDENTS

MR. Y.M. NAKHAWA - APP FOR APPELLANT.

NONE FOR RESPONDENTS.

CORAM: V.M. KANADE, J.

DATE : 17TH OCTOBER, 2007.

P.C.

1. Heard Shri Nakhawa, learned APP appearing on behalf of the State. The State has filed this Application seeking leave to file Appeal challenging the Judgement and Order passed by the Additional Sessions Judge, Thane dated 6-8-2003 whereby he was pleased to allow the Appeal filed by the Appellant and set aside the Judgment and Order of conviction passed by the Chief Judicial Magistrate, Thane in Criminal Case No. 693/97.

2. The brief facts in nut shell are that the Respondents are the owners of the shop against which the Judgment and decree was passed by the Civil Court. When the complainant alongwith the police gone there to

execute the decree the Respondents/Accused assaulted the decree holder and the constable. The prosecution case is that while the decree was being executed the decree holder has removed the garments kept in the shop and placed these garments on the road. The accused reached there. They snatched the garments kept on the road and assaulted the complainant and thereafter the present complaint was lodged for the offence punishable under section 353, 332, 504, 506 read with sec. 34 of Indian Penal Code. Prosecution examined the complainant, court's bailiff, panch witness. The trial court after going through the evidence on record came to the conclusion that the prosecution had not examined the police constable who had accompanied the bailiff and the complainant. Further the trial court observed that the injury certificate was not produced by the prosecution. The trial court also accepted the defence version in which it was alleged by the accused that they were under the mistaken belief that the complainant was trying to commit trespass in his property and remove the articles which was kept in his shop. The trial court has further observed that neither the complainant nor the bailiff has disclosed their identity to the accused.

3. It is quite well settled that when the two views are possible and one view is favourable to the accused then

the benefit of doubt should be given to the accused. In

the present case the trial court has given benefit of doubt to the accused and has passed an order. In my view there is no infirmity in the order passed by the Sessions Court, Thane. After the incident in question the bailiff thereafter executed the decree and accused handed over possession of the shop to the complainant. Under these circumstances, leave is refused. Appeal is dismissed.

(V.M. KANADE, J)